IN THE HIGH COURT OF UTTARANCHAL, NAINITAL.

No. 10- COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING.

[(Chapter VIII, Rule 32(2)(b)]

Criminal Appeal No. 1954/2001
(Old No. 1327/1992)

Deep Chand Appellant.

Vs.

State Respondent.

Date on 07-03-2006

A.F.R. (Approved for Reporting)
Not Approved for Reporting

(B.C. Kandpal, J.)

Date : 07-03-2006

In the High Court of Uttaranchal, at Nainital.

Criminal Appeal No. 1954/2001
(Old No. 1327/1992)

Deep Chand S/o Banarasi Jamadar
R/o Village Jakhaki P.S. Raipur,
District Bijnor at present Sweeper
Veterinary Hospital Augastmuni
District Rudraprayag ……. Appellant.

Versus

State …… Respondent.

Sri Alok Singh, Senior Advocate, learned counsel for the appellant.
Sri G.S. Sandhu, learned A.G.A. for the State.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 07-03-2006

The appellant has preferred this criminal appeal against the judgment and order dated 26-6-1992, passed by the Sessions Judge, Chamoli, in S.T. No. 18/1991, whereby he convicted accused/appellant for an offence punishable under Sections 302, 376 and 201 I.P.C. and sentenced him to undergo life imprisonment under Section 302 I.P.C.; ten years R.I. under Section 376 I.P.C. and further five years' R.I. under Section 201 I.P.C. However, all the sentences to run concurrently.

2- Brief facts of the case are that Chandra Lal was employed as Sub Post Master in Post Office at Augustmuni, and he was residing along with his family in a Government Quarter at Augustmuni. On 15-4-1991 at about 4 P.M. Km. Sumanlata aged about 11 years, the daughter of Chandra Lal had gone to her school to attend extra classes. When Chandra Lal after the office hours arrived at his house, he did not find Km. Sumanlata in the house and he became

perturbed. Then he went out of his house to search his daughter and he went to her school and there he found that the school building was locked and thereafter he went to Km. Anita, the teacher of the school of his daughter and inquired about the whereabouts of his daughter from her and then Km. Anita told him that Km. Sumanlata had already gone back from the school at 5 P.M. Chandra Lal thereafter along with his friend Bendi Lal Tamta went to his in –laws house in village Bharatpur, about 12 kilometers away from Augastmuni and found that Km. Sumanlata had not come to his in-laws house. Then he returned back to Augustmuni in the same night along with his brother in law Vijay Kumar. Then they went to Tilwara at the house of Rajendra Kumar, the another brother in law of Chandra Lal, where he was posted as Pharmacist. There also whereabouts of Km. Sumanlata were not know. Then they along with Rajendra Kumar reurned back to Augastmuni. On the next day, i.e. 16.4.1991, at about 6 A.M. Chandra Lal, along with his brother in laws Vijay Kumar and Rajendra Kuma and Raghubir Lal and Sundar Lal had started the search of Km. Sumanlata and again went towards the school of Km. Sumanlata. There they saw the dead body of Km. Sumanlata in the dry water chamber tied in gunny bag. It was found that Km. Sumanlata was wearing a frock only and was naked below her waist. They also saw blood marks at places and sign of dragging and following the blood marks and sign of dragging, they reached near the quarter of the peons of veterinary hospital of Augastmuni and blood marks were seen up to the gage of the house of accused Deep Chand. Chandra Lal was sure that the murder of his daughter was committed by Deep Chandra and hence he went to Police Chauki Augastmuni and there he wrote written report, Ext. Ka. 1 and gave it at the Chauki.

3- On the basis of the written report, Dheeraj Singh, constable clerk posted at Police Chauki Augastmuni prepared chick F.I.R., Ext. Ka.9 and registered a case in the G.D. at report No.7 at about 7.30 A.M., Ext. Ka 10 on 16-4-1991. Asadu Lal, Station Officer in charge P.S. Ukhimath, District Chamoli started the investigation of the crime. He recorded the statements constables posted at Police Chauki Augastmuni and started the search of the accused. He came

to know from an informer that the accused was sitting and concealing himself below a tree in the nursery situate near the veterinary hospital at Augustmuni. The I.O. arrested the accused on 16.4.1991 at about 11 A.M. During arrest the accused tried to escape but after chase by the policemen he was caught. The accused confessed his guilt before the I.O. and told that on 15-4-1991 he had committed rape on Km. Sumanlata and murdered her. He also confessed his guilt before witnesses Rajendra Prasad Goswami and Chandra Singh. The accused handed over a blood-stained gunny bag, material Ext.8, from inside his quarter, which was used by him to wipe out the blood marks in the floor of his room. The accused also handed over the Kudal, material Ext. 6, a pair of shoes, material Ext 5, and blood-stained underwear, material Ext.7 after taking our from underneath the cot lying in his room. The I.O. took the aforesaid articles in his possession and prepared memo Ext. Ka.5. The I.O. also prepared site plan, Ext. Ka. 11 of the place of seizure of these articles after inspection. On the pointing of the accused, the I.O. got recovered the dead body of Km. Sumanlata, kept in a gunny bag, from inside a dry water tank and prepared recovery memo, Ext. Ka.2 and also prepared site-plan, Ext. Ka.12 of the place of recovery of the dead body. Photographs of the dead body, material Exts. 1 and 2 were taken at the spot. Thereafter the I.O. performed the inquest on the dead body of Km. Sumanlata with the help of accompanying S.I. Mehar Chand Khanna and prepared inquest report, Ext. Ka.6. The dead body was sealed at the spot and letter, Ext. Ka.15, was prepared to the C.M.O. for post mortem. The I.O. also prepared sample seal, Ext. Ka.16, letter to reserve Inspector of Police, Ext. ka.17 and the dead body was handed over to constable Swyambar Dutt and other lady constables for post mortem. The I.O. also took in to possession the blood-stained and plain earth at the residence of the accused, material exhibits ka. 9 and Ka. 11 respectively and sealed it separately at the spot. He also collected blood-stained grass, material Ext. 10 from the said passage and sealed it also at the spot. He also prepared recovery memo of seizure of blood-stained grass and the earth, Ext. Ka.3. The I.O. also prepared site plan of the

place of recovery, Ext. Ka. 11. He also took in to possession the underwear, material Ext. 11 of the accused, and prepared memo Ext. Ka.4. Thereafter on the same day, i.e. 16.4.1991, the I.O. took the accused to the police chauki Augastmuni, and made entries of the arrest of the accused in the G.D. at report No. 12, at 14.30 hours, the G.D. entry is Ext. Ka.12.

4- On 17.4.1991 the Sri Johari Lal, Station Officer, P.S. Ukhimath took the investigation of the case from Sri Asadu Lal. Sri Johary Lal recorded the statements of the various witnesses and submitted his report, carbon copy of which is Ext. Ka.19, before the C.J.M. Chamoli for sending the case property for chemical examination. He also submitted his report to the C.J.M. for recording the statement of accused U/s 164 Cr.P.C. and the statement of the accused was recorded U/S 16 Cr.P.C. by the C.J.M Chamoli on 17-4-1991. After completion of investigation he submitted charge sheet, Ext. Ka.20 against the accused on 31.5.1991. The I.O. also received the chemical examiner's report, Ext. Ka.21 regarding the case property and submitted it in the case.

5- On committal to the court of Sessions, the Sessions Judge framed charges under Sections 376, 302, 201 I.P.C. against the accused, to which he pleaded not guilty and claimed to be tried.

6- In order to prove its case, the prosecution has examined in all 10 witnesses. Out of these, P.W.1 Chandra Lal is the complainant of the case and father of deceased Km. Sumanlata. He has proved the written report, Ext. Ka.1. He has narrated the facts of the case and about the missing of Km. Sumanlata and the search made by him. This witness also corroborated the prosecution version about the finding of dead body of Km. Sumanlata inside a dry water tank, kept in a gunny bag and also the blood marks and sign of dragging upto the residence of accused Deep Chand.

7- P.W.2, Pratham Das, next door neighbour of accused Deep Chand. This witness was posted as messenger in the veterinary hospital at Augustmuni. This witness has stated that on 15-4-1991 he had gone to village Margaon to see the ill buffalo of Jitar Singh and at about 6 P.M. he returned back and thereafter straightway went to Vijaynagar and from there he returned to his residence at

about 8.30 P.M. on the same day. He further deposed that when he returned at this residence, Deep Chand demanded phenyl from him because according to him there were warms in his latrine. After 10 or 15 minutes when Deep Chand had gone from his house after taking phenyl, this witness also gone at the room of Deep Chand accused because he had to stitch foul in a Saree and there was no sufficient light in his room and when he reached in the room of accused, he had seen that his entire room was wet and accused Deep Chand and his son were lying on the cot. He further stated that the accused had told him that he was not feeling well and he wanted to sleep and at that time he was very much frighten. In the next morning at about 6.20 A.M. the accused was arrested by the police.

8- P.W.3, Vijay Kumar and P.W.4, Rajendra Kumar are the witnesses of fact. They have narrated about the search of Km. Sumanlata, deceased made by them along with the complainant Chandra Lal. They have corroborated the statement of Chandra Lal, P.W.1 and also deposed about the recovery of dead body and other circumstances of blood marks, sign of dragging etc.

9- P.W.5, Rajendra Prasad is the witness of memos of recovery of the dead body and other case properties. He has narrated about the recovery of dead body, seizure of blood stained and plain earth, Kudal, gunny bag, underwere etc. He also proved the inquest report, as he was also appointed as panch, at the time of inquest of the dead body.

10- P.W.6, Shrada Nand is the photographer. He had taken photographs of the dead body of the deceased and proved the photographs material exhibits 1 and 2 and its negatives exhibits 3 and 4.

11- P.W.7, Dr. Mayank Upadhyaya, has performed autopsy on the dead body of Km. Sumanlata on 17-4-1991 at 10 A.M. in the District Hospital Gopeshwar, Chamoli and proved post mortem report, Ext. Ka.7. According to this witness on external examination he found that the body was average built, pale looking. Rigor mortis passed away from upper as well as lower parts of the body. Hands and feet washerman like, clotted blood was present

long inner aspects of thigh and legs. Eyes were closed, mouth half open, clotted blood was present over both ears. The doctor has found the following ante-mortem injuries on the person of the deceased Km. Sumanlata:-

(i) Incised wound present over left side of scalp vertically placed, 11 cm above inner end of left eye-brown, size of the wound was 4cm x 1cm x bone deep.

(ii) Lacerated wound 4cm x 1cm x brain deep, over left occipital bone. Margins were bluish in colour.

(iii) Incised wound 5cm x 1cm x bone deep present over right side of forehead. Clotted blood present along with margins of the wound.

(iv) Linear abrasion 12cm horizontally placed over left side of face, starting from middle ending in to an incised wound. Size of the wound was 4.5cm x .5cm x bone deep, over left cheek bone. Colour bluish black.

(v) Incised wound 3.5 cm x .5 cm x muscle deep, starting from left lower end of nose transversally placed. Clotted blood present over the margin.

(vi) Incised wound 7cm x 1cm x cutting through upper lip upto mucosa, 1cm above and along left side of upper lip.

(vii) Incised wound 3cm x 1.5cm x bone deep in front of left ear horizontally placed.

(viii) Incised wound 7.5cm x 2cm x 5cm deep behind left ear, descending backwards, cutting through left mastoid bone.

(ix) A linear contusion 14cm x 2cm transversally placed over upper front and left part of neck between chin and firings. Base pale margins chocolate brown colour. Multiple abraded contusions varying in size from 1cm x 1cm to 4cm x 1cm present below and along injury No.9 bluish black in colour.

(x) A contusion 4cm x 1.5 cm bluish black in colour present over inner aspect of right elbow.

(xi) An abraded contusion 6cm x 5cm bluish black present over outer aspect of left elbow.

On examination of genital, the Medical Officer found that Moro pubic, labia Majora Minora intact. Hymen easily admitting index finger. Posterior tear radially present. Post commisures intact. Vaginal smear from posterior fornix sent to Pathologist for the presence or absence of sperms.

In internal examination fracture of left occipital bone 3cm long was found. Main brains torn below occipital bone fracture. Brain was lacerated and congested below left occipital bone fracture. On the base of skull clotted blood and fracture of middle cranial fesses present.

In the opinion of the doctor the cause of death of the deceased was shock and haemorrhage as a result of ante-mortem injuries. Sign of penetration was present.

Vaginal smear report as per Pathologist Dr. Anil Rathi was as under:

> The vaginal smear shows plenty of partly autolysins ephithehalcells and occasional leucocytes. No deficient structure of living or dead sperm could be detected in the smear sample. Duration of death about 36 to 42 hours.

This witness also proved the hand writing and signatures of Dr. B.H. Rizvi who has prepared the injury report, Ext. Ka.8. of accused Deep Chand. Dr. Rizvi had medically examined the injuries of accused Deep Chand on 16-4-1991 at 10-40 P.M. in the Hospital and has prepared the injury report, Ext. Ka.8. The doctor has noted following injuries on the person of the accused:-

(i) Swelling and contusion 3cm x 2cm on right hand above writs joint.

(ii) One abrasion .5cm x.1cm on posterior aspect of right forearm.

(iii) One contusion 5cm x 2cm on anterior aspect of left forearm.

(iv) One abrasion 1cm x .2cm above right ear.

(v) Contusion and swelling on left side of head.

(vi) Swelling on lip.

(vii) Multiple abrasion on abdomen measuring 2cm x .5cm to 1cm x .2cm.

In the opinion of the doctor injuries were simple in nature and cause by hard and blunt object and were about 10 to 12 hours old.

12- P.W.8, S.I. Asadu Lal is the first Investigating Officer. He has narrated about the steps taken by him during the investigation and also proved the prosecution papers prepared by him at the time of the investigation as referred above.

13- P.W.9, Johari Lal is the second I.O. of the case. This witness also narrated about the investigation carried by him and proved the letter, Ext. Ka.19 written by him to C.J.M. for chemical examination of the case property and charge sheet, Ext. Ka.21 submitted by him.

14- P.W.10 Sri Amarjeet Singh, the then C.J.M. Chamoli had recorded the statement of the accused Deep Chand U/S 1764 Cr.P.C. and he has proved the said statement Ext. Ka.22.

15- After conclusion of prosecution evidence, the statement of the accused was recorded U/S 313 Cr.P.C. He has denied the allegation of the prosecution. In regard to his confessional statement, he stated that Sri Johari Lal had threatened him that he should make confession about the guilt otherwise he would not be left. He also stated that he was beaten by the Police Officer due to which he became unconscious and his medical examination was conducted. The accused did not adduce any kind of evidence in his defence.

16- After assessment of the evidence on record and hearing the counsel for the parties, the Sessions Judge came to the conclusion that the prosecution was able to prove its case beyond reasonable doubt against the accused and accordingly held him guilty for the offences U/Ss 302, 376 and 201 I.P.C. and sentenced him as aforesaid.

17- Feeling aggrieved, the accused has preferred the appeal.

18- We have heard the learned counsel for the accused/appellant, learned G.A. and perused the record.

19- This case rests on circumstantial evidence. It is true that there is no eye witness in the case from whose evidence it can be said that the accused/appellant Deep Chand (hereinafter called as

‘appellant’) had committed rape upon the deceased Km. Sumanlata and murdered her and thereafter intentionally causing her dead body to disappear in order to screen himself from the legal punishment.

20- The question which arises for our consideration is the present case is, whether Km. Sumanlata was raped, murdered and thereafter was thrown in a tank tied in a gunny bag by the appellant, as has been alleged by the prosecution. The prosecution has tried to prove the complicity of the appellant in this case on the following circumstances:-

(A) Blood-stains found at the place, where the dead body of the deceased Km. Sumanlata, was discovered and these blood-stains were followed up to the room of the appellant.

(B) The conduct of the appellant at the time of his arrest that he tried to escape his arrest by the police. The conduct of the appellant also to wipe-out the blood-stains inside his room with a gunny bag.

(C) The recovery of the incriminating articles, i.e., Kudal, which was used as a weapon in the commission of murder of Km. Sumanlata (material Ext. 6), underwear of the deceased Km. Sumanlata (material Ext. 7), a pair of blood-stained shoes, belonging to the appellant (material Ext.5), underwear of the appellant (material Ext.12), at the instance of the appellant.

(D) The confession made by the appellant under Section 164 Cr.P.C., which was recorded by the Chief Judicial Magistrate Chamoli.

(E) The report of Chemical Examiner (Ext. Ka.20) showing spermatozoa on the under-wear of the deceased (material Ext. 7) and the underwear of the appellant (material Ext. 12), as well as frock and swaitor of the deceased Km. Sumanlata.

(F) Report of the Chemical Examination showing human blood in the recovered Kudal, underwear of appellant and under-were of the deceased.

21- Learned counsel for the appellant has argued that the prosecution has utterly failed to establish the guilt of the appellant beyond reasonable doubt. He has tired to place before us certain infirmities, lacunas, as well as latches in the prosecution case, which according to him are serious in nature and creating serious doubt on the authenticity of the prosecution case.

22- The first and foremost argument advanced by the learned counsel for the appellant is that the first information report in this case is anti-timed and has been lodged after due deliberation and consultation, hence cannot be relied upon. He has pointed out our attention towards the statement of P.W.1, Chandra Lal, who has stated in his deposition before the court that the Police Inspector had arrived at his residence at 3 O'clock in the day and had taken him at the Police Chauki, where he had written the report, Ext. Ka. 1 and gave it there. He has also invited our attention towards the statement of Asadu Lal, P.W.8, who is the Investigating Officer of this case and who has stated that the F.I.R. of this case was lodged at 7-30 A.M. on 16-4-1991 and immediately after the registration of the case he started commencing the investigation and had gone to arrest the accused. He has further submitted that according to P.W.8 Asadu Lal, the accused was immediately arrested and he was brought at his residence and on his confession the dead body of the deceased was recovered from the tank. Therefore, according to the submission, advanced by the learned counsel for the appellant, the first information report becomes absolutely doubtful and unreliable and in any case it could not have been lodged at 7.30 A.M. on 16-4-1991, in view of the infirmities in the evidence of prosecution witnesses.

23- The record reveals that there is no doubt that the complainant of the case, P.W.1, Chandra Lal has deposed in his statement that the Police Inspector had come to him in the day at 3 O'clock and took him to the Police Station, where he prepared the written report and lodged it there, but the deposition of this witness further reveals that in paragraph-9 of his cross-examination, he has specifically stated that the F.I.R. was lodged at 7 – 7.30 A.M. This witness has denied the suggestion given by the defence that he has given the

statement after tutoring him. This witness has further deposed in his cross-examination that the later statement given by him, that the F.I.R. was lodged at 7 – 7.30 A.M., is correct. His statement finds support from the evidence of P.W.8, Asadu Lal, who is the Investigating Officer of this case, as according to him the F.I.R. was lodged at 7.30 A.M. at Police Chauki, Augastmuni. This witness proved the F.I.R. prepared by Dheeraj Singh, Constable Clerk and copy of G.D. No.7 at 7.30 A.M. dated 16-4-1991 (Ext. Ka.9 and Ext. Ka.10). There is nothing on the record on behalf of the defence that he was in any way inimical with the accused. Hence there is no reason for false implication of the appellant in this case. There is no cross-examination in this regard by the defence and there is noting to disbelieve the statement of P.W.1, Chandra Lal, complainant, as well as P.W.8, Asadu Lal, I.O. The statement of the complainant in this regard finds corroboration from the evidence of Vijay Kumar and Rajendra Kumar, P.W.3 and P.W.4 respectively, who have stated in their evidence that the gunny bag in the dry water tank, near the veterinary hospital, was found at 6.30 A.M. and thereafter complainant Chandra Lal had gone to Police Chauki immediately. There is nothing on record to suggest that P.W.3 and P.W.4 are deposing falsely in this case pertaining to the fact of recovery of dead body of deceased Km. Sumanlata. Therefore, we are of the view that there is no delay in lodging the first information report and the first information report can be said to have been lodged at the time, i.e., 7.30 A.M., as has been alleged by the prosecution.

24- Learned counsel for the appellant has next submitted that factum of the recovery of the dead body of the deceased, as well as seizure of the incriminating articles, at the instance of the accuses/appellant, creates grave doubt on the authenticity of the prosecution case.

25- We have carefully examined the entire evidence available on the record in this regard. The statement of Asadu Lal, P.W.8 (I.O.) is clear that after the arrest of the accused, he brought him to his residence, where the appellant made his confessional statement and led him to the place where the dead body of the deceased was

discovered and then at the instance of the accused the dead body was recovered and thereafter on the pointing out of the accused the other incriminating articles, viz., Kudal, under-were of the deceased, under-wear of the accused, a pair of blood-stained shoes belonging to accused and the blood-stained gunny bag were handed over to the police after taking all these articles from underneath the cot lying in his room. The recover memo has been signed by P.W.5, Rajendra Prasad who has also admitted this fact.

26- Learned counsel for the appellant has invited our attention towards the citation **Anter Singh versus State of Rajasthan (2004) 10 Supreme Court Cases 657** and has submitted that in case if the recovery of any incriminating article has been done from an open space, then it would not inspire confidence as the same would not come within the ambit of expression 'fact discovered', hence the recovery of the incriminating articles under Section 27 of the Evidence Act in this case, cannot be said to be authentic. Perusal of the judgment cited before us shows that the facts and circumstances in that case are absolutely different. In this case the evidence available before us, clearly shows that the incriminating articles were recovered at the instance of the accused from underneath the cot lying in his room.

27- Learned counsel for the appellant has also put a great stress of this aspect of the matter that the confessional statement of the appellant has not been recorded by the magistrate in accordance with the provisions of Section 164 Cr.P.C. nor the proper procedure was followed by the Magistrate concerned. Out attention has also been invited towards the citation **Bhagwan Singh and others versus State of M.P. (2003) 3 Supreme Court Cases 21** and on the basis of this citation it has been submitted that the Magistrate should ask specific questions to the accused whether any physical or mental pressure was put on him by the investigating agency and the Magistrate should give sufficient time and also assured of protection from any sort of apprehended torture or pressure from the police in case of his refusal to make confession. It has also been submitted that the confessional statement must have been recorded in question answer form.

28- Our attention has also been drawn to the statement of the accused recorded under Section 313 Cr.P.C. and it has been stressed that the accused has stated in his statement that the police assaulted him and threatened him that he should confess his guilt. We have gone through the evidence available on the record in this regard. The basic principle to record the statement under Section 164 Cr.P.C. is to find out as to whether the confessional statement given by the accused or by any other person is voluntary and has been given without any inducement or threat. In case if the evidence of Sri Amarjeet Singh, P.W.10, Chief Judicial Magistrate Chamoli, is to be examined, then it reveals that he has deposed in his statement recorded before the court that he recorded the statement of accused Deep Chand under Section 164 Cr.P.C. on 17-4-1991. The Magistrate has also proved the statement (Ext. Ka. 22 recorded by him) and has specifically deposed that on an application of the Station Officer of P.S. Ukhimath, on 16-4-1991 for recording the confessional statement of the accused, he fixed next date, i.e, 17-4-199, after giving him time for reflection. In the cross-examination this witness has stated that on his enquiry the accused stated that he was giving his confessional statement voluntarily and without any inducement or threat by any person. It is true that the confessional statement of the accused has not been recorded by the Magistrate in question answer form, but simply for this reason, the confessional statement recorded by the Magistrate, who is an independent witness, and has nothing to do either with the accused or with the prosecution, can not be discarded. The evidence of Sri Amarjeet Singh C.J.M. (P.W.10) does not suffer from any infirmity and we do not find any reason to discard the same. The decision cited before us by the learned counsel for the appellant also does not apply to the facts and circumstances of the present case.

29- As far as this submission of the learned counsel for the appellant, that the confessional statement of the accused was recorded under threat given to him by the Station Officer of P.S. Ukhimath, who is the second I.O. of this case, is concerned, this part of the submission cannot be accepted, as there is no evidence

to indicate that Johari Lal, P.W.9 who was the Station Officer of P.S. Ukhimath and the second I.O. of this case, was in any way inimical with the accused and had an occasion to extend the threat to him for giving confessional statement. Nothing has been indicated by the learned counsel for the appellant in the cross-examination of this witness in this regard. The only suggestion given on behalf of the defence to this witness, was that the accused being a poor and helpless man, has been falsely implicated in this case. Therefore, by any stretch of imagination it cannot be gathered that the appellant was extended any threat to give confessional statement before the Magistrate.

30- Learned counsel for the appellant has next argued that the testimony of the witnesses produced by the prosecution in view of certain improvements and infirmities in their deposition becomes completely unreliable. It has been submitted that there are vital omissions in the statements of P.W.1 and other witnesses, i.e., P.W.2, P.W.3 and P.W.4, who are related to the complainant, therefore, their testimony cannot be relied upon in view of the fact that they are the interested and partisan witnesses.

31- We do not find any force in this argument advanced by the learned counsel for the appellant. The witnesses produced by the prosecution have supported the prosecution case and there does not appear any serious infirmity, development or omission in their deposition. The witnesses produced have stated the fact that they had gone to search the deceased and in the morning of 16-4-1991 they found the gunny bag containing the dead body of the deceased in the dry water tank near the veterinary hospital at Augastmuni. These witnesses have also deposed that they had seen the marks of dragging and the blood-stains leading up to the residence of the accused from the place where the dead body of the deceased was recovered. Their evidence finds corroboration from the evidence of P.W.8, Asadu Lal, who has also deposed that he had seen the blood marks from the place where the dead body of the deceased was recovered and these blood-stains led up to the residence of the accused and he collected the blood-stained earth from there. The Chemical Examiner Report also shows that the blood-stained earth

was containing the human blood. The report of the Chemical Examiner cannot be disbelieved. The testimony of the witnesses also cannot be disbelieved. Solely on the ground that they are in relation with the complainant unless there is a serious infirmity in their evidence.

32- The evidence of P.W.2, Pratham Das is very important on the point of the conduct of the accused, as deposition of Pratham Das shows that when he had gone to the room of the accused on 15-4-1991 in the night then he saw that the floor of the room of the accused was washed and it was wet. This witness has also deposed in his evidence that earlier the accused had taken phenyl from him on the pretext that there are insects in his toilet. The room of this witness is contiguous to the room of the accused. There is nothing in the cross-examination of this witness that this witness is either stating lie or is falsely implicating the accused on account of any enmity. The improvement in the statement of this witness is not of such nature which can affect adversely the very root of the prosecution case. Therefore, the conduct of the accused/appellant in this case also points out to this direction that it was the accused/appellant and none else who has committed this crime. The recovery of the bloodstains in front of the room of accused/appellant and then wiping-out the bloodstains inside the room of the accused/appellant with a gunny bag after taking phenyl from the neighbour Pratham Das, P.W.2 and the subsequent recovery of the gunny bag from beneath a cot of the accused inside his room, certainly leads to the conclusion that the accused/appellant has an active involvement in the commission of crime. The chain of circumstances is so complete as not to leave any reasonable ground for a conclusion consistent with the hypothesis of guilt of the accused.

33- In continuation to the aforesaid circumstances of the present case, we further hold that the medical examination report in this case is also indicating the strong circumstance against the accused/appellant. The doctor who conducted the autopsy on the dead body of the deceased Km. Sumanlata, has deposed that the deceased had received as many as 11 injuries on her person. All the

injuries on the person of the deceased are indicating to this aspect of the matter that the deceased was brutally murdered. The another important factor which reveals from the medical examination report is that the sign of penetration in the vagina of the deceased was also present. The duration of the death of the deceased was also opined to be about 36-42 hours and it is clearly established from the medical report of the deceased as well as from the deposition of the doctor that Km. Sumanlata met with homicidal death and her death was not in any way natural death. The evidence of the doctor also supports the prosecution case that Km. Sumanlata was subjected to rape. The evidence shows that within all human probabilities the act must have been done by the accused and none else.

34- Learned counsel for the appellant has next argued that the injuries on the person of the accused have not been explained by the prosecution and since the prosecution has failed to explain the injuries of the accused, then it is a strong circumstance against the prosecution, as the prosecution was bound to explain the injuries on the person of the accused.

35- We do not find any merit in this argument. It is in the evidence of P.W.8, Asadu Lal, who is the Investigating Officer of the case, that at the time of the arrest of the accused, he tried to escape and the he was chased and arrested. It is also in the evidence of this witness that the accused received the injuries during the course of his arrest. The injuries of the accused were promptly examined by Dr. Rizvi at District Hospital, Gopeshwar on 16-4-1991 at 10-40 P.M. This injury report prepared by Dr. Rizvi has been proved by Dr. Mayank Upadhyaya, P.W.7. The nature of the injuries on the person of the accused are not such that it could not have been caused to him at the time of his arrest as stated by P.W.8, Asadu Lal.

36- It is also worthy to mention here that the Chemical Examiner’s Report, Ext. Ka.22 reveals that spermatozoa were found on the underwear (material Ext.7) of the deceased and on the underwear of accused, (material Ext.12). This Chemical Examiner’s Report supports the evidence of the doctor who has conducted the post mortem of the dead body of the deceased and

has opined that the penetration in the private part of the deceased was found and it is a strong circumstance to show that the deceased was also subjected to rape. The defence of the accused that he in fact did not commit the rape, but the deceased was subjected to rape by the brother of Dr. Verma, does not find support from any cogent and reliable evidence and all the incriminating circumstances in the present case are establishing the guilt of the accused/appellant that he committed the rape on deceased Km. Sumanlata and thereafter murdered her and in order to screen himself from the legal punishment of the murder, he concealed the dead body of Km. Sumanlata by tying the same in a gunny bag and thrown it in a dry water tank near his veterinary hospital, Augastmuni.

37- The learned counsel for the appellant has also tried to point out that there are certain serious latches in the investigation of the case which go to the root of the prosecution story making it unbelievable. We again fail to appreciate the submission advanced by the learned counsel for the appellant. It is true that there are certain latches in the investigation of this case, but any irregularity or even an illegality in the investigation of the case should not be treated as a ground to reject the prosecution case. It is now well settled principal that the prosecution case is not going to be thrown out on the ground of the latches in the investigation.

38- Having considered the entire evidence on record, as well as the submissions advanced by the learned counsel for the appellant, we are of the view that the prosecution has been able to prove its case beyond reasonable doubt. The appellant has been rightly convicted and sentenced by the Sessions Judge vide the impugned judgment and order, for the offences he was charged. We do not find any infirmity in ht impugned judgment passed by the court below. We are also of the view that it is the appellant who subjected Km. Sumanlata to rape and thereafter murdered her. It was also the appellant who intentionally concealed the body of the deceased by throwing it in a dry water tank near his veterinary hospital Augastmuni, after tying it in a gunny bag, in order to screen himself from the legal punishment.

39- In view of the aforesaid, the appeal bears no force and is liable to be dismissed.

40- Accordingly the appeal is dismissed.

41- The appellant is on bail. He shall be taken into custody forthwith.

42- Let the record of the court below be immediately sent back so that the C.J.M. concerned may take necessary steps for taking the accused/appellant in custody in order to serve out the sentence imposed against him.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

ISB